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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

CONRAD JAMES, individually  
and on behalf of all others similarly situated,

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY and  
HEAP INC.

Defendants.

) Case No. 3:23-cv-01931-JSC

) **CLASS ACTION**

) **AMENDED AND RESTATED  
CLASS ACTION COMPLAINT**

) **DEMAND FOR JURY TRIAL**

1 COMES NOW the Plaintiff, Conrad James, individually and on behalf of all others  
2 similarly situated, by and through his attorneys, and files this Amended and Restated Class Action  
3 Complaint against Defendants Allstate Insurance Company and Heap Inc. In support thereof,  
4 Plaintiff states the following:

5 **NATURE OF THE ACTION**

6 1. Allstate Insurance Company (“Allstate”) offers consumers quotes for insurance  
7 policies if they fill out a form online at Allstate.com. To obtain a quote, consumers must enter  
8 private information about themselves, including their protected health history.

9 2. Heap Inc. (“Heap”) is a marketing software-as-a-service (“SaaS”) company that  
10 sells platform software product that records consumer interactions with a website in real time.  
11 Website owners can use this software by adding Heap’s JavaScript<sup>1</sup> into the source code of their  
12 website. This allows both Heap and the website owner to record a visitor’s keystrokes and other  
13 actions on the website. By supplying its software to Allstate and knowing Allstate’s purpose in  
14 using its software, Heap actively assisted Allstate and independently participated in the invasion  
15 of Plaintiff’s privacy and the privacy interests of the putative class as more fully described below.

16 3. Allstate embedded Heap’s JavaScript in the source code on its website to optimize  
17 its lead generation efforts. Allstate and Heap benefit financially from collecting information  
18 provided by potential customers, or “leads,” who indicate an interest in purchasing insurance.  
19 Adding Heap’s JavaScript allowed both companies to surreptitiously observe and record visitors’  
20 keystrokes, mouse clicks, and other electronic communications, including their entry of Personally  
21 Identifiable Information (“PII”) and Protected Health Information (“PHI”).

22 4. When users seeking an insurance quote enter private information on Allstate.com,  
23 Allstate shares those communications with Heap in real time, without notifying users and without  
24 first obtaining their consent. The communications Allstate shares with Heap include its users’  
25 geolocation and answers regarding their private personal and medical information, such as name,  
26 email address, age, height, weight, information regarding medical conditions, prescribed

27 <sup>1</sup> JavaScript is a programming language commonly used in website development to add features  
28 and functions to a website.

1 medications, and hospitalization history. Heap's software purports to increase the value of  
2 Allstate's leads by harvesting extra information about each person and independently documenting  
3 the information they provided.

4 5. By wiretapping and intercepting website users' communications, Defendants  
5 Allstate and Heap violate the California Invasion of Privacy Act ("CIPA"), Cal. Penal Code § 631,  
6 and invade Plaintiff's and class members' privacy rights in violation of the California Constitution.

7 6. In November and December, 2022, Plaintiff Conrad James accessed the Allstate  
8 website through his computer and mobile phone and used the Allstate website to search for an  
9 insurance quote, entering private information into the online form at Allstate.com. During  
10 Plaintiff's visit, Defendants Allstate and Heap recorded Plaintiff's electronic communications in  
11 real time, and used the intercepted data to learn his identity, email address, zip code, date of birth,  
12 height, weight, use of prescription medications and tobacco products, and other PII and PHI  
13 without his consent.

14 7. Plaintiff brings this action on behalf of himself and a class of all Californians whose  
15 electronic communications were intercepted by Defendants through Allstate's use of Heap's  
16 software on its website.

### 17 **JURISDICTION AND VENUE**

18 8. This Court has jurisdiction over the claims alleged in this Class Action Complaint  
19 pursuant to 28 U.S.C. § 1332(d)(2)(A).

20 9. Allstate does business throughout the State of California including in the County  
21 of San Francisco, and its registered agent for service is located at 28 Liberty Street New York, NY  
22 10005. The unlawful conduct of interception, tracking, and sharing consumers' online activity  
23 and private information without their consent as alleged herein occurred in the State of California,  
24 including in the County of San Francisco, and was intended and did substantially affect business  
25 and commerce within this State.

26 10. Heap does business throughout the State of California including in the County of  
27 San Francisco, and its principal place of business is located at 225 Bush Street, Suite 200, San  
28

1 Francisco, CA 94104. The unlawful conduct of intercepting, tracking, and sharing consumers’  
2 online activity and private information without their consent as alleged herein occurred in the State  
3 of California, including in the County of San Francisco, and was intended and did substantially  
4 affect business and commerce within this State.

5 11. Pursuant to 28 U.S.C. § 1391, this Court is a proper venue for this action because a  
6 substantial part of the events, omissions, and acts giving rise to the claim herein occurred in this  
7 District.

8 12. This Court has personal jurisdiction over Defendants because Plaintiff’s claims  
9 arise out of Defendants conducting, engaging in, and/or carrying on business in California, and  
10 violating the laws of California. Defendants also purposefully availed themselves of the  
11 opportunity of conducting activities in the State of California by marketing its products within the  
12 State and intentionally developing relationships with customers within the State.

13 **DIVISIONAL ASSIGNMENT**

14 13. Pursuant to Northern District of California Civil Local Rules 3-2(c), 3-2(d), and 3-  
15 5(b), assignment to the San Francisco Division of this District is proper because Defendant Heap’s  
16 principal office is located in San Francisco, California, and a substantial part of the events or  
17 omissions giving rise to the claim occurred in San Francisco County.

18 **PARTIES**

19 14. Plaintiff Conrad James is an adult resident citizen of the State of California and  
20 resides in San Diego, California.

21 15. Allstate is an Illinois company with its principal place of business at 2775 Sanders  
22 Road Northbrook, IL 60062.

23 16. Allstate is an insurance company that calls itself “the Good Hands® people”.<sup>2</sup>  
24 Among other services, Allstate provides consumers with products such as life insurance, auto  
25

26  
27 <sup>2</sup> Allstate, *Our Shared Purpose*, Allstate, <https://www.allstatecorporation.com/about/our-shared-purpose.aspx> (last visited June 30, 2023).

1 insurance, homeowners insurance, and business insurance by enabling consumers to make  
2 purchases online or through an agent.

3 17. Allstate does business throughout California and the entire United States.

4 18. Allstate owns and operates Allstate.com.

5 19. Defendant Heap is a Delaware corporation with its principal place of business at  
6 225 Bush Street, Suite 200, San Francisco, CA 94104.

7 20. Heap is a SaaS company. In connection with its services to website operators, Heap  
8 provides software which monitors and records a website user's activity on a webpage. This  
9 purports to increase the value of leads generated on third party websites by independently  
10 capturing, storing and documenting the information each lead provides and harvesting additional  
11 information about them such as their IP address and geolocation.

## 12 **FACTUAL ALLEGATIONS**

### 13 **I. HEAP'S SOFTWARE**

14 21. Defendant Heap provides a variety of real-time software products through a  
15 "Digital Insights Platform" for companies that want to generate leads for products or services.<sup>3</sup>

16 22. Heap records real-time consumer interactions with websites, including keystrokes,  
17 mouse clicks, and other electronic communications. Through its "Session Replay" feature, Heap  
18 allows "endless replays" that capture a moment-by-moment replay of what happened on the  
19 webpage in the order in which it happened, capturing what the consumer does on the page.<sup>4</sup>

20 23. Heap permits prospective partners to add its JavaScript to their form page and start  
21 capturing lead certificates. As soon as the JavaScript is added to a webpage, Heap will  
22 automatically start to capture the data submitted in the form.

23 24. Heap's JavaScript allows it to record the keystrokes, mouse clicks, data entry, and  
24 other electronic communications of visitors to websites where the JavaScript is installed. It also

25 <sup>3</sup> Heap, *Why You Need a Digital Insights Platform*, Heap, [https://www.heap.io/why-heap/digital-](https://www.heap.io/why-heap/digital-insights-platform)  
26 [insights-platform](https://www.heap.io/why-heap/digital-insights-platform) (last visited June 30, 2023).

27 <sup>4</sup> Heap, *How Heap Works*, Heap, <https://www.heap.io/why-heap/how-heap-works> (last visited  
28 June 30, 2023).

1 allows Heap to track real-time events, historical-based reports, and other information described  
2 above. Heap in turn, provides this data to its clients.

3 25. On its website, Heap advertises that it collects this data immediately and gives you  
4 “the full picture, and then some” by “a single snippet of code.”<sup>5</sup>

5 26. The recording of keystrokes, mouse clicks, data entry, and other electronic  
6 communications begins the moment a user accesses or interacts with a website that contains the  
7 Script. Upon information and belief, Heap’s software transmits the information captured to Heap’s  
8 server, where it is stored and monitored for changes or other activities by the website user. Because  
9 this data is stored or can be accessed by Heap, it can use or access Plaintiff and the putative class  
10 members’ data for other purposes. Additionally, Heap provides data retention to its customers and  
11 charges a fee for storing and retaining its customers’ data.

12 27. In a 2017 study by Princeton University researchers concerning similar technology,  
13 the researchers noted that “the extent of data collected by these services far exceeds user  
14 expectations; text typed into forms is collected before the user submits the form, and precise mouse  
15 movements are saved, all without any visual indication to the user.”<sup>6</sup>

16 28. After adding Heap’s JavaScript into the HTML of a webpage, a unique certificate  
17 is automatically generated for every lead. This allows both Heap and the webpage owner to record  
18 keystrokes, mouse clicks, data entry, and other electronic communications of site users.

19 29. Heap’s business model involves entering into voluntary partnerships with various  
20 companies and providing its software to its partners for a fee. One of Heap’s partners is Allstate.  
21 Both Heap and Allstate benefit financially from Allstate’s use of Heap’s lead generation software.  
22 Heap benefits financially when Allstate purchases its software services. And Allstate benefits  
23 financially from sharing users’ data with Heap, including because “certifying” leads and harvesting

24 <sup>5</sup> Heap, *The Most Complete Data Capture on the Market*, Heap,  
25 <https://www.heap.io/platform/capture> (last visited June 30, 2023).

26 <sup>6</sup> Steven Englehardt, *No boundaries: Exfiltration of personal data by session-replay scripts*,  
27 Freedom To Tinker (Nov. 15, 2017), <https://freedom-to-tinker.com/2017/11/15/no-boundaries-exfiltration-of-personal-data-by-session-replay-scripts/>.

extra data about the users increases the value of the leads, which Allstate uses or sells to lead buyers. Thus, both Heap and Allstate benefit financially from Allstate's use of Heap's software services.

30. Allstate provides a variety of insurance products. To obtain a quote on an Allstate insurance plan, consumers fill out a form online at Allstate.com. Users are prompted to select the "get a quote" button.

31. Allstate uses Heap's JavaScript on Allstate.com, which is embedded into the source code of Allstate's website, as shown in the red box below:

```
<script src="https://ads.revjet.com/analytics?acu=3280"></script>
<script type="text/javascript" async src="https://cdn.heapanalytics.com/js/heap-4138728049.js"></script>
<script></script>
```

32. After selecting the "get a quote" button, consumers are required to answer multiple questions, including questions about their medical health. The consumer's responses are automatically sent to Heap. Consumers must communicate to Allstate information including, but not limited to:

- a. Name, zip code, gender, and age;
- b. Email address;
- c. Height and weight;
- d. Use of prescription medications and tobacco products;
- e. Medical conditions such as cardio or heart history;
- f. The use of marijuana and THC;
- g. Use of illegal drugs; and
- h. Criminal record history.

33. Heap is not an affiliate of Allstate, it is a third-party. An ordinary consumer would not know—and nothing on the face of Allstate.com gives any indication—that their answers in the insurance quote form are being recorded and shared with a third party such as Heap.

34. Without the consent of the user, Allstate enables Heap to monitor, intercept, and record a user's interactions with the site as it asks questions to obtain the above information. The information—including the information listed in Paragraph 32, above—is then automatically transmitted to Heap. After answering the questions seeking the information listed in Paragraph 32, users can obtain a quote for insurance.

35. Users who visit Allstate's website to get an insurance quote are not put on notice of its Privacy Statement, the Terms of Use, or provided with any other notification that the sensitive information they are submitting is being recorded by Allstate or Heap or shared by Allstate with Heap or any other third party.

36. Users who fill out an insurance quote form are also not provided with webform pages tailored to their prior answers. Rather, only those consumers who take the extra step to click on the hyperlink "Why do we ask?" are informed that Allstate collects information:

**let's start with some essentials**

How tall are you?

[? Why do we ask?](#)

Select Feet

Select Inches

What is your weight?

[? Why do we ask?](#)

lbs

What is your sex?

Female | Male

Are you a U.S. citizen?

Yes | No

Answer "yes" if you were born in the United States (including Puerto Rico, Guam or U.S. Virgin Islands), have a parent who is a U.S. citizen (as defined by Child Citizenship Act), or if you are a former alien who has been naturalized as a U.S. citizen.



## Why do we collect this information?



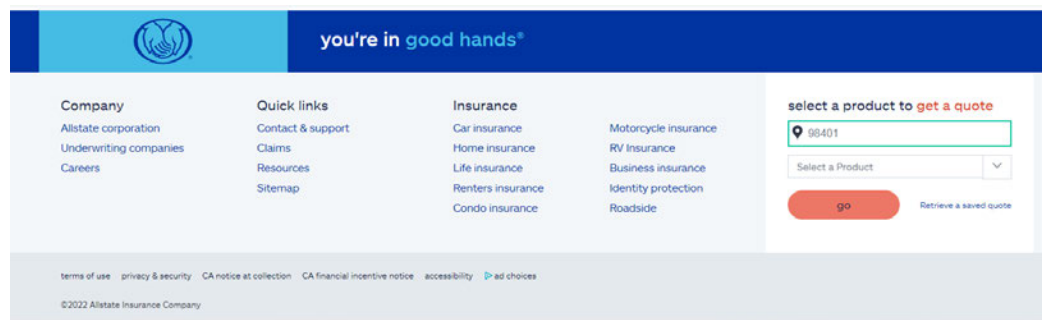
In this section, we will be asking about your health, status, and life activities, in order to assess your level of risk. This allows us to personalize your quote.

37. Even still, the above notice does not notify users of the collection and sharing of their information, which has already been recorded and shared in real time, submitted during the insurance quote form process.

38. Allstate does not obtain consent from consumers to collect or share this information with third parties such as Heap before, during, and/or after consumers submit their sensitive information to obtain an insurance quote.

39. Only if a user were able to find, click, and read through its “Allstate Online Privacy Statement” would a consumer learn that Allstate “may share your personal information with [its] affiliates for business purposes.” In addition, it provides that Allstate “may also share personal information about you with third parties whenever you consent to or direct such sharing.”

40. However, Plaintiff and others who fill out an insurance quote form and provide their private information are not put on notice of Allstate’s Terms of Use and Privacy Statement.



41. Allstate’s Terms of Use and Privacy Statement can only be accessed through a hyperlink that is located, among a multitude of links, in small letters at the very bottom of the page.

1           42. By the time Plaintiff and other consumers began to complete the online form,  
2 however, the interception has already occurred, and their personal information had already been  
3 captured and shared without their knowledge or consent. In other words, even if a user, such as  
4 Plaintiff, reaches the point where he was notified of Allstate's Terms of Use and Privacy  
5 Statement, decides to click through and review the Terms of Use and Privacy Statement, and then  
6 does not agree and leaves the website, that user's personal information has already been captured,  
7 intercepted, and shared in real time.

8           43. Allstate failed to give Plaintiff and members of the putative class adequate notice  
9 that their form responses have been intercepted and transmitted to Heap and that their activity will  
10 continue to be intercepted, transmitted to, and monitored by Heap going forward. This conduct by  
11 Allstate and Heap continues to this day.

12           44. Allstate knows it captures the keystrokes, mouse clicks, and other communications  
13 of visitors to its website, and Allstate supplies that information to Heap and pays Heap for this  
14 service.

15           45. Pursuant to an agreement with Heap, Allstate enables user information to be tracked  
16 by voluntarily embedding Heap's JavaScript into its website at Allstate.com.

17           46. As currently deployed, this functions as a wiretap.

18           47. Allstate and Heap, and each of them, intercepted, recorded, and monetized valuable  
19 personal information without the consent of website users. Allstate recognizes the value and  
20 market for this information. Allstate uses or sells "leads" containing the intercepted information,  
21 and Heap's product is designed to facilitate and increase the value of those leads.

22  
23 **II. DEFENDANTS WIRETAPPED PLAINTIFF'S ELECTRONIC COMMUNICATIONS**

24           48. In November and December 2022, Plaintiff Conrad James accessed the Allstate  
25 website through his computer and mobile phone and used Allstate's website to search for an  
26 insurance quote. Plaintiff and the class used smart phones (cellular telephony with integrated  
27 operating systems to enable web browsing) and/or Wi-Fi-enabled laptops using a combination of  
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1 cellular and landline telephony. As such, the conversations with Defendant were transmitted from  
2 a “cellular radio telephone” and/or “landline telephone” as defined by CIPA.

3 49. Plaintiff was in California on each occasion that he visited the website.

4 50. During each visit, Allstate and Heap recorded Plaintiff’s electronic  
5 communications in real time, using the intercepted data to attempt to learn the identity, email  
6 address, zip code, age, height, weight, use of prescription medications and tobacco products, and  
7 other PII and PHI of Plaintiff while he sought an insurance quote.

8 51. Plaintiff was unaware at the time that his keystrokes, mouse clicks, and other  
9 electronic communications, including the information described above, were being intercepted in  
10 real time and were being disclosed to Heap (a third party), nor did Plaintiff consent to share his  
11 private information with Heap.

12 52. During Plaintiff’s visits, Heap’s “Session Replay” feature recorded a video  
13 capturing Plaintiff’s keystrokes and mouse clicks on the website. It also captured the date and  
14 time of each visit, the duration of the visit, Plaintiff’s IP address, his location at the time of the  
15 visit, browser type, and the operating system on their device.

16 53. Users, including Plaintiff, did not receive notice of Allstate’s Privacy Statement  
17 when they click, “Get a quote,” which initiates the interception of their responses on the form.

18 54. Nor do users provide informed consent when providing personal information that  
19 had already been intercepted and captured without their knowledge or consent.

20 55. Further, because users are not adequately informed that their activity is being  
21 intercepted, users also do not provide informed consent to the interception of the answers they  
22 provide.

23 56. Allstate did not tell Plaintiff or other visitors to its websites that their keystrokes,  
24 mouse clicks and other communications were being recorded and shared with Heap. Even  
25 Allstate’s more limited disclosures were being made *after* the interception had already begun.

26 57. Neither Plaintiff nor any class member consented to being wiretapped on Allstate’s  
27 website or to the recording and sharing of their communications with Heap. Furthermore, any  
28

1 purported consent was ineffective because (i) the wiretapping began from the moment Plaintiff  
2 and class members accessed Allstate's website; and (ii) the Privacy Statement did not disclose the  
3 wiretapping, Heap's interception and recording of their PII, or its sharing of sensitive information.

4 58. At no time before or during a user's browsing of its website does Allstate disclose  
5 that it will be recording users' activities in real time.

6 59. Nor does Allstate's Privacy Statement disclose that it is recording a user's activities  
7 in real time. Even if Allstate had disclosed its wiretapping at issue in its Privacy Statement,  
8 Allstate still acted without Plaintiff's consent because Allstate does not ask for users' consent  
9 before it began wiretapping them.

#### 10 CLASS ACTION ALLEGATIONS

11 60. Plaintiff brings this lawsuit as representative of a class of all resident citizens of  
12 California who visited Allstate.com and provided personal information on Allstate's form to  
13 receive a quote for insurance and whose information was intercepted and disclosed to Heap.

14 61. The "Class Period" begins four years preceding the date of the filing of the initial  
15 complaint and continues to the present.

16 62. Plaintiff reserves the right to modify, change, or expand the class definition as  
17 appropriate based on further investigation and discovery obtained in the case.

18 63. Excluded from the class are Defendants, their employees, agents and assigns, and  
19 any members of the judiciary to whom this case is assigned, their respective court staff, the  
20 members of their immediate families, and Plaintiff's counsel.

21 64. This action may be properly maintained as a class action, as it satisfies the  
22 numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of  
23 Fed. R. Civ. P. 23.

24 65. **Numerosity:** The class is sufficiently numerous because it consists of at least  
25 thousands of individuals, making joinder impractical.

26 66. **Commonality and predominance:** A well-defined community of interest exists  
27 among class members. Common questions of law and fact exist with regard to each of the claims  
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1 and predominance over questions affecting only individual class members. Questions common to  
2 the class include:

- 3 a. whether Defendants violate the California Invasion of Privacy Act  
4 (“CIPA”), Cal. Penal Code §§ 631 and 632.7;
- 5 b. whether Defendants invaded Plaintiff’s and putative class members’  
6 privacy rights in violation of the California Constitution;
- 7 c. whether class members are entitled to actual and/or statutory damages for  
8 the aforementioned violations; and
- 9 d. whether Defendants should be enjoined from engaging in such conduct in  
10 the future.

11 67. **Typicality:** The claims of the named Plaintiff are typical of the claims of the class  
12 that he represents and arise out of the same standard form improper conduct perpetrated on  
13 members of the class.

14 68. **Adequacy of representation:** Plaintiff will fairly and adequately protect the  
15 interests of the members of the class that he represents and has no interest antagonistic to those of  
16 other class members. Plaintiff has retained class counsel competent to prosecute class actions and  
17 is financially able to represent the class.

18 69. **Superiority:** The class action is superior to other available methods for the fair  
19 and efficient adjudication of this controversy since individual joinder of all members of the class  
20 is impracticable. The common questions of law and fact regarding Defendant’s conduct and the  
21 interpretation of form documents devised by Defendant predominate over any questions affecting  
22 only individual class members. The interest of judicial economy strongly favors adjudicating the  
23 claims as a class action rather than on an individual basis because the amount of any individual’s  
24 damages is too small to make it practicable to bring individual lawsuits. The conduct of this action  
25 as a class action presents far fewer management difficulties, far better conserves judicial resources  
26 and the parties’ resources, and far more effectively protects the rights of each class member than  
27 would piecemeal litigation. Compared to the expense, burdens, inconsistencies, economic  
28

1 infeasibility, and inefficiencies of individualized litigation, the challenges of managing this action  
2 as a class action are substantially outweighed by the benefits to the legitimate interests of the  
3 parties, the Court, and the public of class treatment in this Court, making class adjudication  
4 superior to other alternatives.

5 70. Class action treatment is proper, and this action should be maintained as a class  
6 action because questions of law and fact predominate over any questions affecting only individual  
7 members, and a class action is superior to other available methods for the fair and efficient  
8 adjudication of the controversy.

9 71. Plaintiff is not aware of any obstacles likely to be encountered in the management  
10 of this action that would preclude its maintenance as a class action. Class-wide treatment provides  
11 the Court with authority and flexibility to maximize the efficiencies and benefits of the class  
12 mechanism and reduce management challenges.

13 72. **Injunctive relief:** Defendants have acted or refused to act on grounds generally  
14 applicable to the class, thereby making appropriate final injunctive relief and corresponding  
15 declaratory relief with respect to the class as a whole.

16 **COUNT I**  
17 **Violation of the California Invasion of Privacy Act (“CIPA”)**  
18 **Cal. Penal Code § 631**

19 73. Plaintiff repeats the factual allegations contained in the foregoing paragraphs as if  
20 fully set forth herein.

21 74. Plaintiff brings this claim individually and on behalf of the members of the class  
22 against Defendants.

23 75. To establish liability under section 631(a), a plaintiff need only establish that the  
24 defendant, “by means of any machine, instrument, contrivance, or in any other manner,” does any  
25 of the following:

26 Intentionally taps, or makes any unauthorized connection, whether physically,  
27 electrically, acoustically, inductively or otherwise, with any telegraph or telephone  
28

wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal telephone communication system,

*Or*

Willfully and without the consent of all parties to the communication, or in any unauthorized manner, reads or attempts to read or learn the contents or meaning of any message, report, or communication while the same is in transit or passing over any wire, line or cable or is being sent from or received at any place within this state,

*Or*

Uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained,

*Or*

Aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the acts or things mentioned above in this section.

76. Section 631(a) is not limited to phone lines but also applies to newer technology such as computers, the Internet, and email.

77. Heap's software product is a "machine, instrument, contrivance, or . . . other manner" used to engage in the prohibited conduct at issue in this action.

78. Heap's software product intercepts Class members' communications in transit while passing over the lines of internet communication by recording them in real time as the user enters information. Plaintiff and the putative class members' communications with Allstate were conducted using smart phones (cellular telephony with integrated operating systems to enable web browsing) and/or Wi-Fi-enabled laptops and over the lines of internet communication.

79. **Allstate's Violations:** At all relevant times, by using Heap's software technology, Allstate:

1 a. intentionally tapped, electrically or otherwise, the lines of internet  
2 communication between Plaintiff and class members on the one hand, and  
3 Allstate's website on the other hand; and

4 b. aided, agreed with, employed, and conspired with Heap to implement  
5 Heap's technology and to accomplish the wrongful conduct at issue here.

6 80. **Heap's Violations:** At all relevant times, by providing its software service to  
7 Allstate, Heap:

8 a. intentionally tapped, electrically or otherwise, the lines of internet  
9 communication between Plaintiff and class members on the one hand, and  
10 Allstate's website on the other hand;

11 b. willfully and without the consent of all parties to the communication, read  
12 or attempted to read or learn the contents or meaning of electronic  
13 communications of Plaintiff and class members, while the electronic  
14 communications were in transit or passing over any wire, line or cable or  
15 were being sent from or received at any place within California; and

16 c. aided, agreed with, employed, and conspired with Allstate to implement  
17 Heap's technology and to accomplish the wrongful conduct at issue here.

18 81. Plaintiff and class members did not consent to any of Defendants' actions  
19 connected with Heap's wiretaps on Allstate's website. Nor did Plaintiff or class members consent  
20 to Defendants' intentional access, interception, reading, learning, recording, and collection of  
21 Plaintiff's and class members' electronic communications.

22 82. Defendants' violation of section 631(a) constitutes an invasion of privacy.  
23 Information transmitted by Plaintiff and intercepted by Defendants included, among other things,  
24 Plaintiff's name, zip code, gender, age, email address, height, weight, use of prescription  
25 medications and tobacco products, medical conditions, use of marijuana and THC, use of illegal  
26 drugs and criminal record history. This information is sensitive and confidential and Plaintiff had  
27 a reasonable expectation of privacy when he believed that he was only sharing this information  
28



1 with Allstate for the purpose of obtaining an insurance quote from Allstate. Defendants'  
2 intentional interception and misuse of Plaintiff's sensitive and confidential information is highly  
3 offensive and egregious. Plaintiff's personal and confidential information constitutes more than  
4 digital identification information such as an IP address. Instead, Plaintiff's PII and PHI was  
5 illegally obtained by Heap and Allstate provided Heap access to Plaintiff's PII and PHI. Plaintiff's  
6 PII and PHI are sensitive and confidential information and the disclosure and interception of  
7 Plaintiff's PII and PHI by Defendants is highly offensive and constitutes egregious conduct.

8 83. Unless enjoined, Defendants will continue to commit these illegal acts. Plaintiff  
9 continues to desire to use the internet, including Allstate's website, to search for information about  
10 and shop for insurance, but does not want his provision of personal data informing an insurance  
11 quote to be wiretapped again. In addition to Allstate.com, Allstate operates different websites  
12 using various names, and partners with many other companies who operate their own websites  
13 using various names, and partners with many other companies who operate their own websites.  
14 Heap provides its software product to many other website operators who offer a wide array of  
15 services. For Allstate.com and many other websites that Plaintiff is likely to visit in the future,  
16 they have no practical way to know if their website communications will be monitored or recorded  
17 by Heap, or by both Defendants.

18 84. Plaintiff and class members seek all relief available under Cal. Penal Code § 637.2,  
19 including injunctive relief and statutory damages of \$5,000 per violation.

20 **COUNT II**  
21 **Violation of California Invasion of Privacy Act**  
22 **Cal. Penal Code § 632.7**

23 85. Plaintiff repeats the factual allegations contained in the foregoing paragraphs as if  
24 fully set forth herein.

25 86. Section 632.7 of California's Penal Code imposes liability upon anyone "who,  
26 without the consent of all parties to a communication, intercepts or receives and intentionally  
27 records, or assists in the interception or reception and intentional recordation of, a communication

1 transmitted between two cellular radio telephones, a cellular radio telephone and a landline  
2 telephone, two cordless telephones, a cordless telephone and a landline telephone, or a cordless  
3 telephone and a cellular radio telephone.”

4 87. Plaintiff and the class members communicated with Defendants using smartphones  
5 (sophisticated cellular radio telephones) and/or devices enabled by cellular or landline telephony.  
6 As such, Plaintiff’s communication was transmitted from a “cellular radio telephone” and/or  
7 “landline telephone” as defined by Section 632.7.

8 88. Consumer communication from the software functions on Allstate’s website is  
9 transmitted via a combination of landline telephony and cellular telephony. As such, these  
10 communications with Plaintiff and the class members were transmitted from telephony subject to  
11 the prohibitions of Section 632.7.

12 89. As described herein, Defendants recorded telephony communication without the  
13 consent of all parties to the communication in violation of Section 632.7.

14 90. As described herein, Allstate also assisted Heap in the interception, reception,  
15 and/or intentional recordation of telephony communication in violation of Section 632.7.

16 91. Defendants’ conduct constitutes numerous independent and discreet violations of  
17 Cal. Penal Code § 632.7, entitling Plaintiff and Class Members to injunctive relief and statutory  
18 damages.

19 **COUNT III**  
20 **Violation of California Unfair Competition Law (“UCL”)**  
21 **Cal. Bus. & Prof. Code § 17200 *et seq.***

22 92. Plaintiff repeats the factual allegations contained in the foregoing paragraphs as if  
23 fully set forth herein.

24 93. Plaintiff brings this claim individually and on behalf of the members of the class  
25 against Defendants.

26 94. Defendants are each a “person” under Cal. Bus. & Prof. Code § 17201.  
27  
28

## Unlawful Conduct

### Unfair Conduct

98. Defendants acted in an immoral, unethical, oppressive, and unscrupulous manner by knowingly wiretapping Plaintiff's and class member's communications of their private personal information without their consent.

99. The gravity of the harm resulting from Defendants' unfair conduct outweighs any potential utility of the conduct. The practice of wiretapping private communications, including confidential PII and PHI, harms the public at large and is part of a common and uniform course of wrongful conduct. There are reasonably available alternatives that would further Defendants' business interests. For example, Allstate could obtain a user's fully informed consent to share their data with a third party before doing so. Similarly, Heap could require affirmative user consent before recording consumer communications via software.

100. The harm from Defendants' unfair conduct was not reasonably avoidable by consumers. Plaintiff and class members had no reasonable means of discovering that Defendants were wiretapping Plaintiff's and class members' communications of their private information on Allstate.com.



1           108. Plaintiff and class members have a strong interest in: (1) precluding the  
2 dissemination and/or misuse of their sensitive, confidential PII and PHI; and (2) making personal  
3 decisions and/or conducting personal activities without observation, intrusion or interference,  
4 including the right to visit and interact with various Internet sites without being subjected to  
5 wiretaps without Plaintiff's and class members' knowledge or consent.

6           109. Defendants wrongfully intruded upon Plaintiff's and class members' seclusion in  
7 violation of California law. Plaintiff and class members reasonably expected that the private  
8 personal information sensitive, confidential PII and PHI they entrusted to Allstate would be kept  
9 private and secure and would not be disclosed to any unauthorized third party or for any improper  
10 purpose.

11           110. At all relevant times, by implementing Heap's wiretaps on Allstate's Website, each  
12 Defendant intentionally invaded Plaintiff's and Class Members' privacy rights under the California  
13 Constitution and procured the other Defendant to do so.

14           111. Defendants unlawfully invaded Plaintiff's and class members' privacy rights by:

- 15           a. Harvesting their personal information, including sensitive, confidential PII  
16           and PHI, and transmitting it to unauthorized third parties or for improper  
17           purposes;
- 18           b. enabling the disclosure of personal and sensitive facts about them in a  
19           manner highly offensive to a reasonable person; and
- 20           c. enabling the disclosure of personal and sensitive facts about them without  
21           their informed, voluntary, affirmative, and clear consent.

22           112. A reasonable person would find it highly offensive that Defendants received,  
23 collected, and stored Plaintiff's and class members' private personal information without their  
24 consent.

25           113. Plaintiff and class members did not consent to any of Defendants' actions in  
26 implementing Heap's wiretaps on Allstate's website.

116. This invasion of privacy is serious in nature, scope, and impact.

118. Plaintiff and class members therefore seek all relief available for an invasion of privacy in violation of Article I, Section 1 of California's Constitution.

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, respectfully request the Court enter judgment against Defendants through an order:

- 21

- g. Awarding Plaintiff and the class their reasonable attorneys' fees and expenses and costs of suit; and
- h. Such other and further relief as the Court deems necessary or appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury of all claims and issues so triable.

Dated: June 30, 2023

Respectfully submitted,

**BERMAN TABACCO**

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